United Nations ECE/MP.PP/2017/10

Economic and Social Council

Distr.: General
17 May 2017

Original: English

Economic Commission for Europe

Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Sixth session
Budva, Montenegro, 11–13 September 2017
Item 6 (c) of the provisional agenda
Substantive issues: access to justice

Draft decision VI/3 on promoting effective access to justice*

Prepared by the Bureau

Summary

The present document sets out a draft decision on promoting effective access to justice, prepared by the Bureau of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

In view of its mandate to "make such proposals and recommendations to the Meeting of the Parties as it considers necessary for the achievement of the purposes of the Convention" (ECE/MP.PP/2/Add.15, para. 2 (d)), at its twentieth meeting (Geneva, 15–17 June 2016) the Working Group of the Parties requested the Bureau to prepare a draft decision on access to justice for consideration by the Meeting of the Parties at its sixth session.

The Bureau prepared an initial draft decision on the basis of the relevant outcomes of the twentieth meeting of the Working Group of the Parties, the note by the Chair of the Task Force on Access to Justice (AC/WGP-20/Inf.3) submitted to that meeting, the outcomes of the work undertaken by the Task Force in the current intersessional period and the previous decision by

* There have been no major substantive changes made to the most recent version of the text, published as document ECE/MP.PP/WG.1/2017/L.3. The present document is therefore being submitted for publication without formal editing.

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the Meeting of the Parties on the same subject (decision V/3).

As agreed, the draft decision was then distributed to Parties and stakeholders on 27 September 2016 for comments by 7 November 2016.

The Bureau considered the comments received and prepared a revised version of the document for further consideration and approval by the Working Group at its twenty-first meeting (Geneva, 4–6 April 2017).

At its twenty-first meeting, the Working Group revised and approved, as amended at the meeting, the present draft decision on promoting effective access to justice (AC/WGP-21/CRP.3)[1] and requested the secretariat to submit it to the Meeting of the Parties for consideration at its sixth session.

[1] Available from http://www.unece.org/index.php?id=43897#/.

The Meeting of the Parties,

Recalling the provisions of article 9 and other relevant provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,

Also recalling its decisions I/5, II/2, III/3, IV/2 and V/3 on promoting effective access to justice, V/5 on the strategic plan for 2015–2020 and VI/5 on the work programme for 2018–2021,

Affirming the importance of the rule of law and the need to further strengthen its application in environmental matters,

Recognizing that effective access to justice in environmental matters is critical for the successful implementation of a number of Sustainable Development Goals, in particular Goal 16,

Mindful that national implementation reports, the findings of the Compliance Committee, relevant case law of the Parties and the work carried out under the auspices of the Task Force on Access to Justice to date have collectively shown that challenges remain to the full implementation of the third pillar of the Convention across the region,

Having reviewed the reports of the Task Force on Access to Justice submitted to the Working Group of the Parties in the period since the fifth session of the Meeting of the Parties (ECE/MP.PP/WG.1/2016/11; ECE/MP.PP/WG.1/2017/6; and ECE/MP.PP//WG.1/2017/5),

1. *Notes with appreciation* the work undertaken by the Task Force on Access to Justice, and expresses its gratitude to Sweden for its leadership of the Task Force;

2. *Encourages* Parties, signatories and other interested States to undertake further considerable efforts to improve the effectiveness of public access to justice in environmental matters, e.g., by removing as the case may be financial and other barriers, such as standing and scope, stimulating multi-stakeholder dialogues, increasing public accessibility to the relevant information as required by the Convention and implementing e-justice initiatives,[2] and calls on international organizations and other stakeholders to support these efforts;

3. *Welcomes* initiatives of Parties, signatories, international organizations and other stakeholders to strengthen the protection of whistle-blowers, environmental activists and other persons exercising their rights in conformity with the provisions of the Convention against penalization, persecution, harassment and other forms of retaliation for their involvement, and calls on Parties, signatories, international organizations and other stakeholders to further support such initiatives;

4. *Also welcomes* capacity-building initiatives by Parties, signatories and international organizations and other stakeholders aimed at promoting more effective implementation of article 9 of the Convention, and encourages Parties, signatories and international organizations and other stakeholders, as appropriate, to undertake such initiatives in the next intersessional period;

5. *Expresses its appreciation* to Parties, signatories and other stakeholders for contributing material to the online jurisprudence database concerning the Convention, and calls on Parties, signatories and other stakeholders, including judges, legal professionals and academics, to use and promote the database and to further contribute to its expansion and improvement;

[2] E-justice initiatives include the use of information and communication technologies to improve public access to justice and other types of activities involving the resolution of disputes.

6. *Stresses* the pivotal role that courts play in interpreting provisions of domestic law on access to justice and the importance that such provisions be interpreted in accordance with the Convention;

7. *Also stresses* the significant role of national and international associations of judges, prosecutors and other legal professionals, and in particular of judicial training institutions, and also the substantial role of public interest lawyers and non-governmental organizations in promoting effective public access to justice;

8. *Welcomes* the establishment of a network of the judiciary, judicial training institutions and other review bodies in the pan-European region under the auspices of the Task Force to promote the exchange of experiences in access to justice and the enforcement of the rule of law in environmental matters, and encourages the cooperation of the network with networks of other legal professionals;

9. *Invites* Parties and Signatories to support the participation of representatives of the judiciary, judicial training institutions and other review bodies in the network, invites other such networks to participate in this initiative and calls on partner organizations to support the initiative;

10. *Welcomes* initiatives of the Parties and signatories to strengthen judicial specialization in environmental law and the capacities of courts and other relevant bodies in using independent environmental expertise, as appropriate;

11. *Encourages* Parties to continue the integration, to the extent possible, of the issue of access to justice in environmental matters into the curriculum of law faculties, public administration and judicial training institutions and other relevant institutions supporting the implementation of the Convention;

12. *Decides* to extend in time the mandate of the Task Force on Access to Justice, under the authority of the Working Group of the Parties, to carry out further work in relation to the implementation of the Convention;

13. *Welcomes* the offer of … to lead the work of the Task Force;

14. *Requests* the Task Force, subject to the availability of resources, to undertake the following work:

(a) To promote the exchange of information, experiences, challenges and good practices relating to the implementation of the third pillar of the Convention, with a focus on the main barriers to effective access to justice and with special attention to:

(i) Information cases;

(ii) Acts or omissions that contravene permit requirements or laws relating to the environment;

(iii) Financial barriers;

(iv) The protection of whistle-blowers, environmental activists and other persons exercising their rights in conformity with the provisions of the Convention

(v) Standing;

(vi) Scope;

(b) To identify priority needs with respect to public access to justice in environmental matters, to take stock of capacity-building initiatives taking place in the region and beyond, and to promote the involvement of associations of judges, public interest lawyers and other legal professionals in these initiatives;

(c) As resources allow, to prepare analytical, guidance and training materials to support the work detailed in subparagraphs (a) and (b) above;

(d) To promote understanding and the use of the relevant findings of the Compliance Committee of a systemic nature, multi-stakeholder dialogues and e-justice initiatives, and the dissemination of information on access to review procedures, relevant case law and collections of relevant statistics;

(e) To continue facilitating cooperation and networking among members of the judiciary, judicial institutions and other review bodies of countries from different subregions (e.g., Western, Eastern and South-Eastern Europe, the Caucasus and Central Asia);

15. *Entrusts* the secretariat, subject to the availability of resources, to undertake the following work:

(a) To participate in, plan and implement, as appropriate, capacity-building activities, including workshops and trainings related to access to justice, to be organized in cooperation with relevant partner organizations;

(b) To expand, in cooperation with the Task Force, the web portal for the exchange of jurisprudence concerning the Convention;

(c) To support the networking of the judiciary, judicial institutions and other review bodies under the auspices of the Task Force;

16. *Invites* Parties, signatories, other interested States and international and other organizations to participate in the Convention's activities on access to justice, and to allocate funds for this matter;

17. *Encourages* Parties, signatories, other interested States and partner organizations to facilitate the involvement of representatives of ministries of justice, the judiciary, judicial training institutions, review bodies and other organizations having a strong profile in access to justice issues in relevant activities under the Convention;

18. *Requests* the Working Group to hold a thematic session on promoting the effective public access to justice during one of its meetings in the coming intersessional period, with a view to providing opportunities for Parties, signatories and other stakeholders to exchange experiences on the subjects that deserve particular attention.